MINUTES OF THE SELECTMEN'S MEETING SPECIAL MEETING at ANNUAL TOWN MEETING SEPTEMBER 3, 2019

PRESENT: Willard J. Boulter, Jr. (Chairman), John G. Brown, Jr. (Clerk), Jessica M. Rushing (Selectman), Daniel W. Trabucco (Selectman), Edwin J. Thorne (Town Manager), Robert Clarke, Ronald Boidi, Arthur Egerton, Gino Fellini, Richard Madden, Mark Sotir, Robert DeMarzo, Carey Day, Kathleen O'Neil, Paul Irons, Rachel Keller, Sabrina Chilcott (Assistant Town Manager), and others. NOT PRESENT: Arthur P. Boyle, Jr. (Vice-Chairman)

At 7:30 pm, Mr. Boulter opened the meeting and advised that this meeting is being made available to the public through a live video and audio broadcast on Comcast Government Access Channel 15 and is also being recorded for airing on the channel at future dates. Comments made in open session will be recorded.

PEMBROKE BOARD & COMMITTEE COLLABORATION - CONSERVATION COMMISSION

Mr. Sotir stated that commissions of conservation were given responsibility in 1972 as local regulatory authorities to administer the terms incorporated in the Wetland Protection Act as well as open space matters. As the regulatory authority, residents come before the Board with their projects and the Board's responsibility is to adhere to the regulations contained within the Act and help residents craft solutions and serve the public. Mr. Sotir concluded by stating that the open space needs are underserved. Mr. Clarke distributed a pamphlet from the Massachusetts Association of Conservation Commissions handbook that outlines the member's duties. He concurred that there is no staff or funding to maintain the town's open space and they need leadership on the Open Space Committee. Mr. Madden stated that the town's pristine fresh water estuaries are one of the best in the state and he feels trees are important. Mr. Fellini stated that the board could use more volunteers on both boards and in the field. Mr. Sotir voiced upset with the Board's appointments that lacked a recommendation from the Commission. Ms. Rushing inquired as to whether the members had received written guidance with respect to Conservation's function and purpose in order to reduce confusion and overlapping responsibility and jurisdiction from the Selectmen's staff. The answer was that none had. Discussion ensued on the volunteer application form and its lack of all boards, committees and commissions listed as options. The Selectmen's staff was tasked with updating the form.

VOTE, REQUEST FOR RE-APPOINTMENT: ROBERT CLARKE, CONSERVATION COMM.

Chairman Boulter established protocol ground rules for public input into this deliberation. He stated that business must be conducted through the Chair; speakers must be recognized by the Chair; speakers must approach the podium and provide their name and address for the record; and repetitive statements or remarks will not be allowed in an effort to allow everyone a chance to speak. Mr. Boulter advised that the evening's business is the request for re-appointment of Robert Clarke to the Conservation Commission and complaints brought to the Board of Selectmen regarding a conflict of interest and/or appearance of conflict of interest in holding the two roles simultaneously, that of the paid, appointed position of Conservation Agent and unpaid appointed position of Conservation Commissioner. Mr. Boulter advised that Robert Clarke was notified and invited to participate in the Selectmen's Executive Session under M.G.L. c.30A, Sec. 21(1) and chose to participate in open, public session which is his right. Mr. Boulter asked Mr. Clarke if this was so; Mr. Clarke stated ves. Mr. Trabucco stated that he doesn't believe that the Agent being on the Board is best practice; he likened it to the Health Agent as inspectional services and recommender making motions and voting on the Board of Health. One is a paid staff representative of the town as inspector, advisor and recommender to the boards, allowing the boards to process the information, impartially deliberate and render a vote in the best interests of the town and its residents. He stated that the efforts of the Town Government Study Committee on behalf of the residents has been to modernize the town's structure and move to a twenty-first century model; he stated that Robert Clarke individually has been a longtime loyal employee and citizen, and his opinion is not even remotely based on Mr. Clarke as an individual, but rather to correct dual roles that need to be separated. Ms. Rushing stated that she was surprised when the Selectmen did not vote on this reappointment request July 9th and has since spoken with many different Boards of Selectmen and a peer in the town of Hanover who recommended she review MGL c.268A §21A which prohibits the duality unless town meeting votes specifically to allow the dual appointments, and Pembroke did so. Ms. Rushing stated that she contacted the Massachusetts Association of Conservation Commissions and the Secretary of State's

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office. Ms. Rushing concluded by stating that, as it is not a legal conflict of interest, she will rely on town meeting's vote as a guide to reappoint Mr. Clarke. Mr. Brown asked Mr. Clarke if he still wants to serve on a board whereby the majority of the members have written letters claiming that they feel that his role as both the Agent and a Commissioners is a conflict of interest; Mr. Clarke responded in the affirmative. Mr. Boulter stated that he feels Mr. Clarke struggles to effectively perform both roles but overall believes him to be a good Agent. Mr. Boulter reminded the board that the Agent's position reports directly to the Town Manager, not to the Selectmen. Mr. Boulter stated that his role as Agent is to inspect, develop Orders of Condition's, then he makes the motion in the meeting and votes on those Orders; this in conjunction with the Conservation Chairman's statement at the meeting that 'what Mr. Clarke wants, he gets' as the most knowledgeable Board member is not appropriate and exemplifies undue influence. Mr. Boulter voiced concerns with comments made in open session of a Conservation Commission meeting whereby Mr. Clarke stated that the applicant before the board was an employer and a friend and he voted on the application despite the appearance or possible conflict. Mr. Boulter further cited different examples of his observations. Mr. Boulter concluded by stating that the Selectmen have received four different letters from Conservation Commission members stating that there is a conflict of interest and offered to read them into the record. Mr. Sotir voiced opposition in rebuttal of one of the observations. Mr. DeMarzo of Stagestop Lane stated that he has served for many years in public service for the residents of the town and he believes Mr. Clarke should be reappointed. He advised that there is no conflict of interest, and when an appearance of conflict exists a form is filed with the Town Clerk. Mr. DeMarzo stated that he was told by Mr. Boulter that he has lists that he has maintained regarding Mr. Clarke and other employees which Mr. DeMarzo feels is wrong. Mr. Boidi of 36 Water Street identified as a Conservation Commission member and Open Space liaison, stating that he feels that a conflict of interest charge should have been originally heard in an open Conservation Commission meeting and concluded by stating that he does not recommend appointing any more inexperienced members, Mr. Day of Glenwood Road stated that he believes the issue is linked to a 300th Anniversary Committee gift to the town (water wheel) and that Mr. Boulter has a conflict of interest. Mr. Day recommended Mr. Clarke's reappointment stating that the responsibility of the Commission is to uphold the Wetlands Protection Act as the regulatory authority and Mr. Clarke has faithfully served the town and its residents. Ms. O'Neil from Franklin Street in Halifax stated that she served as the Conservation Commission secretary for fourteen years and that Mr. Clarke is a dedicated and hard working person. Mr. Clarke rose and requested the cited examples list from Mr. Boulter who then provided them. Mr. Irons of Milford Drive asked why this issue has arisen now when it has existed for twenty-five years. Mr. Clarke stated that he will leave his role as Commissioner voluntarily when there is someone qualified to serve in the role. Ms. Keller stated that no one on the Conservation Commission is currently qualified to make a motion aside from Mr. Clarke. Mr. Boulter requested that a final vote be tabled until there is a full, five member board present. Mr. Trabucco stated he would prefer to resolve the situation this evening as it is sixty days old. Discussion ensued on whether a tie vote is a pass or fail of the original motion and it was confirmed to be a failure of the motion. Mr. Trabucco stated that he believes this cannot end with failure in a tie vote which would result unless he considers the wishes of the body and two other board members and changed his vote willingly. Ms. Rushing moved to reappoint Robert Clarke to the Conservation Commission; Mr. Brown seconded the motion. The vote was 3-1 with Mr. Boulter opposed.

At 8:55 pm Mr. Trabucco moved to adjourn; Ms. Rushing seconded the motion. The vote was unanimously in favor.

MATERIALS & EXHIBITS

Annual Town Meeting Vote 1992 RE: R. Clarke (Town Clerk/BOS/TM Office)

Selectmen's Minutes of June 26, 2995 (BOS/TM Office)

Letters, A.Egerton, R.Madden, G.Fellini, S.Grelich RE: Conflict of Interest, R. Clarke (BOS/TM Office)

Conflict Disclosure Form filed 8/29/2019, R. Clarke ((Town Clerk/BOS/TM Office)

Vacancy Applications, Hayley Devlin & Alexandra Perry (ConCom/BOS/TM Office)

Unsolicited document presented mid-meeting: R. Clarke, printout from MACC website re: a handbook Unsolicited document presented mid-meeting: W. Boulter, personally prepared document (BOS/TM Office)